

**INTERGOVERNMENTAL AGREEMENT
FOR THE OPERATION OF SCHOOLS AS COMMUNITY CENTERS
CITY OF SURPRISE AND DYSART UNIFIED SCHOOL DISTRICT NO. 89**

This agreement (“Agreement”) is made and entered into between Dysart Unified School District No. 89 of Maricopa County, Arizona (“District” or "the District") and the City of Surprise, Arizona (“City” or "the City").

RECITALS

- A. Arizona law encourages cities and school districts to cooperate in using facilities to better and more efficiently serve the public.
- B. City and District both recognize that schools operated by the District in the City, to the extent possible, can serve as community centers after school hours, on weekends, during holidays and during the summer.
- C. City and District both recognize the value to provide for the joint planning and development of future facilities, and scheduling and implementation of programs to be conducted at school facilities.
- D. The City and District wish to cooperate to ensure that schools serve as community centers when they are not being used for school purposes and should be shared to the extent feasible.

Now, therefore, pursuant to A.R.S. §§ 9-500.05, 11-952, 15-363, 15-364, 15-1511 and other statutes, the City and District agree as follows:

AGREEMENT

Section 1. Definitions

1.1 “City Activities” – all programs and events put on by the City utilizing city staff and/or volunteers.

1.2 "City Facilities" means all City-owned facilities, including any facilities that are constructed after this Agreement becomes effective.

1.3 "City Uses" means City activities and includes scheduled maintenance of facilities and City sponsored activities. “City Uses” shall include activities organized by non-profit entities under a cooperative agreement with the City.

1.4 “District Activities” - all programs and events put on by the District utilizing district staff and/or volunteers.

1.5 "District Facilities" means all facilities owned or operated by the District within the City of Surprise, including any facilities constructed after this Agreement becomes effective.

1.6 "District Uses" means District activities and includes scheduled maintenance of facilities and District sponsored activities. “District Uses” shall include activities organized by non-profit entities under a cooperative agreement with the District.

1.7 "Non-Instruction Periods" means those calendar days when school is not scheduled to be held, including Saturdays, Sundays, and District-designated holidays or vacation days.

1.8 "Non-School Hours" means those hours of each calendar day during Instruction Periods, beginning no later than forty-five (45) minutes after classes are dismissed.

1.9 "Out-of-Pocket Costs" means those direct costs incurred by City or District over and above normal operating costs.

Section 2. Term and Termination of Agreement

2.1 Term. The initial term of this Agreement will be for one year, effective July 1, 2017, this Agreement will automatically renew for subsequent terms of one year for up to five years (terminating June 30, 2022) unless the Agreement is terminated pursuant to sections 2.2, 11.6 or 11.9 of this Agreement.

2.2. Termination. Either party may terminate this Agreement at the end of its initial term or at the end of each subsequent term by providing the other party with ninety (90) days' written notice of the intention to so terminate; provided, however, that the termination of the Agreement shall not be effective until any events or programming that have already been scheduled by District or City at the other's facilities with the other's consent have been completed.

2.3 Prior Agreements. City and District have previously entered into agreements regarding the use of the facilities at the West Point, Countryside, Western Peaks and Marley Park schools. Those agreements shall remain in effect according to their terms; however, the parties hereby amend each of those agreements so that the parties shall comply with Sections 3, 4 and 5 of this Agreement at each of those locations.

Section 3. Joint Scheduling, Reporting and Oversight

3.1 Meetings and Scheduling. As needed, designated representatives of District and City shall meet to plan and review the scheduling at District and City Facilities during Non-Instruction Periods and Non-School Hours.

3.2 Documentation of Costs. The District and City will maintain and share records of costs associated with all uses of each other's facilities.

3.3 Annual Determination of Costs, Benefits and Contributions. On an annual basis, the District and the City will calculate and review the costs and benefits of this Agreement, taking into account hours of facility utilization, costs (including Out of Pocket Costs), fees and charges, capital investments and any other contributions made to the other party, waived or costs imposed on the other party. Any imbalance in the contributions made by each party pursuant to this Agreement shall be rectified through adjusting future contributions and benefits without exchanging cash, except for payment of Out of Pocket Costs as specified in this Agreement.

3.4 Audit. The City and District shall have the right, at their sole cost and expense, to audit costs associated with facility use and documentation of such costs by notifying the other party (Audited Party) of its intent to audit within thirty (30) days of receipt of the annual determination of costs, benefits and contributions. Any such audit shall be conducted by an accounting firm of the requesting party's choosing, and such accounting firm shall have reasonable access to the Audited Party's books and records and work papers, and shall have the right to meet with personnel of the Audited Party. To the extent that any such audit reveals an error in the calculation of reported costs from the use of facilities in an amount greater than five

percent (5%), the requesting party will be promptly and without set-off reimbursed its reasonable costs and expenses of such audit by Audited Party. Any disputes regarding costs associated with facility use or the audit, if not resolved by the parties within thirty (30) days, will be submitted to an independent, third party auditor to be mutually agreed by the parties, acting reasonably and in good faith. Any agreed upon or agreed auditor mandated adjustment costs associated with facility use shall be promptly paid.

Section 4. Use of District Facilities by City

4.1 City Use. The City may request uses of District facilities for City Use during Non-School Hours or Non-Instruction Periods when the District is not using District Facilities for District Uses. After scheduling for District Uses, the District will give the City first priority for use of District Facilities. District may, in its discretion, decline to allow City Use of some District Facilities. However, District will make every reasonable effort to accommodate City requests for facilities. Documentation will be provided upon request to explain denied requests. If the District agrees to City Uses of District Facilities, such uses shall be governed by the terms of this Agreement.

4.2 Fees for Use. The District waives any and all fees for the City Uses of District Facilities. However, the City will pay District the Out of Pocket Costs resulting from City Uses of District Facilities. Payment of Out of Pocket Costs owed by the City will be made in a timely manner and no later than sixty (60) days following the receipt of invoice.

4.2.1 All invoices for use of facilities shall itemize all Out-of-Pocket Costs associated with the City Uses of District Facilities. The invoice will clearly state the amount and type of fees waived pursuant to this Agreement.

4.2.2 Out of Pocket Costs shall be established by the District-approved fee schedule (at the time of the facility use), as may be amended from time to time.

4.3 Requests for Services and Equipment. Specific requests by the City for services or equipment may be provided, at direct charge, to the City. By way of example, if the City requests custodial services at a District Facility at a time when a custodian is not normally scheduled in the building, the City will be assessed a direct charge for service hours provided.

4.4 Conflicts in Scheduled Use. In the event that a District Use takes precedence over a scheduled City Use, District will provide notice no later than forty-eight (48) hours in advance and use its best efforts to find an alternative location to host the City Use. The District and City agree that conflicts regarding the City Use of District Facilities will be resolved promptly, in good faith and in accordance with this Agreement by the District's designated representative.

4.5 Compliance with Rules. The City's employees and invitees must comply with the applicable rules adopted by the District for the use of a District Facility and any conditions imposed by the District on such City Use.

4.6 Cancellations. If City reserves District facilities for anticipated City Activities or City-Sponsored Activities that are subsequently cancelled, City shall give District notice of the cancellation at least thirty (30) days before the activity was scheduled to commence. If at least thirty (30) days' notice of a cancellation is not provided, City shall be assessed the District's rental rate for the facilities that were reserved for the period of time for which the facilities were reserved.

Section 5. Use of City Facilities by District

5.1 District Use. The District may request use of City Facilities for District Use when the City is not using City Facilities for City Uses. After scheduling for City uses, the City will give the District first priority for use of City Facilities. The City may, in its discretion, decline to allow District use of some City Facilities. However, City will make every reasonable effort to accommodate District requests for facilities. Documentation will be provided to the District upon request to explain denied facility requests. If the City agrees to District Uses of City Facilities, such uses shall be governed by the terms of this Agreement.

5.2. Fees for Use. The District agrees to pay City for the Out of Pocket Costs resulting from District Use of City Facilities. Payment of Out of Pocket Costs owed by the District will be made in a timely manner and no later than sixty (60) days following the receipt of an invoice. The City waives any and all other fees for District Uses of City Facilities.

5.2.1 All invoices for use of facilities shall itemize all Out-of-Pocket Costs associated with the District Uses of the City Facilities. The Invoice will clearly state the amount and type of fees waived pursuant to this Agreement.

5.2.2 Out of Pocket Costs shall be established by the City-approved fee schedule (at the time of the facility use), as may be amended from time to time.

5.3 Requests for Services and Equipment. Specific requests by District for services or equipment may be provided, at direct charge, to the District. For example, if the District should request custodial services at a City Facility at a time when a custodian is not normally scheduled in the building, the District would be assessed a direct charge for service hours provided.

5.4 Conflicts in Scheduled Use. In the event that a City Use takes precedence over a scheduled District Use, City will provide notice no later than forty-eight (48) hours in advance and use its best efforts to find an alternative location to host the District Use. The District and City agree that conflicts regarding District Use of City Facilities will be resolved promptly, in good faith and in accordance with this Agreement by the City's designated representative.

5.5 Compliance with Rules. The District's employees and invitees must comply with the applicable rules adopted by the City for the use of a City Facility and any conditions imposed by the City on such District Use.

5.6 Cancellations. If District reserves City facilities for anticipated District Activities or District-Sponsored Activities that are subsequently cancelled, District shall give City notice of the cancellation at least thirty (30) days before the activity was scheduled to commence. If at least thirty (30) days' notice of a cancellation is not provided, District shall be assessed the City's rental rate for the facilities that were reserved for the period of time for which the facilities were reserved.

Section 6. Construction of Facilities

6.1 Construction of Facilities. District and City shall consult with each other regarding plans or proposals to construct new facilities that may be suitable for joint uses. Consideration shall be given during planning of such facilities to whether changes in design of a City or District facility might facilitate joint use. Consideration shall also be given to whether economies for the community might be achieved by constructing facilities in a manner that is conducive to joint use.

6.2 Expedited Plan Review and Inspection. City will perform, in an expedited manner, the customary plan review and inspections in connection with District schools to be constructed

in the City of Surprise while this Agreement is in effect. City and District acknowledge that it is imperative that District receive priority treatment with regard to plan review and inspections to the extent necessary to avoid delays in construction and City agrees to provide such priority treatment.

6.3 Fees. City agrees to waive any and all fees that it might otherwise be entitled to charge to District in connection with the construction of District Facilities while this Agreement is in effect, with the exception of Development Impact Fees. All fees waived will be accounted for and reported to respective parties.

Section 7. Repair of Property Damage

7.1 Property Damage. The District will be responsible for the costs to repair any property damage caused by the District Use of City Facilities, and the City will be responsible for the costs to repair any property damage caused by the City Use of District Facilities.

7.2 Reporting Damage. The facility owner will notify the user of damage or loss promptly upon discovery of damage. The notification will identify the facility, the use that caused the damage, and the date of damage and will describe the damage and estimate the cost of repairs.

7.3 Repair of Facilities. Except as otherwise mutually agreed, repair of facilities will be the responsibility of the facility owner.

7.4. Reimbursement. The facility owner will invoice the facility user upon completion and payment of the cost of repairs. The invoice will itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is contracted, a copy of the contractor's itemized statement will be attached. Actual costs will be invoiced if less than estimated and/or fixed costs. Reimbursement shall be made within 30 days from receipt of such invoice.

7.5 Disagreements.

7.5.1 The facility user will retain the right to disagree with any and all items of damage to facilities, equipment or missing property, provided that this challenge is made within ten (10) working days after first notification. Where notice of disagreement is provided in a timely manner, the facility user may decline to pay a request for reimbursement until the matter is settled.

7.5.2 Disagreements must be made in writing to the facility owner and will clearly identify the reasons for refusing responsibility for damages to the facility or equipment. Failure to do so within the prescribed time period will be considered as acceptance of responsibility by the facility user.

7.5.3 Settlement of disagreements, after proper notification, will be made by an on-site investigation involving both the District and City representatives. If damage occurs as a result of shared use of a facility over time or during an undetermined time period, both the City and District will share equally in the cost(s) to repair the damage if the City and District mutually agree that the repair is necessary.

Section 8. Insurance and Indemnification

8.1 Indemnification. Each party (the "Indemnifying Party") shall, to the extent permitted by law, defend, indemnify and hold harmless, jointly and severally, the other party and each official, or employee thereof (any such person being referred to herein as an "Indemnified Party"). This indemnity applies to any and all losses, claims, damages, expenses (including reasonable attorney fees), or liabilities ("Liabilities"), joint or several, which the Indemnified

Party may be subject to in law or in equity, but only to the extent that such Liabilities arise out of or are based upon the use of facilities by the Indemnifying Party or its employees and invitees, as provided in Sections 4 and 5 of this Agreement. The obligations of the foregoing indemnification provision shall not apply to the extent that any such Liabilities are found to have resulted from the negligence or intentional misconduct of the Indemnified Party.

8.2 Insurance. Each party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence, insuring against all liability of said party and its authorized representatives arising out of and in connection with said party's use or occupancy of the facilities. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under this Indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$2,000,000. Comprehensive general liability shall name the other party to this Agreement as an additional insured. All insurance policies shall provide that the policies cannot be cancelled, not renewed, nor limited in scope of coverage or limits until and unless thirty (30) calendar days prior notice is given to the other party.

8.3 Self-Insurance. The obligations of the City and District with respect to the insurance specified in this Section 8 may be satisfied by the existence of a self-insurance program containing the same coverage and elements specified herein with respect to third party insurance.

Section 9. Notices

9.1 Notices. All notices given, or to be given, by either party to the other, shall be given in writing, by registered mail, and shall be addressed to the Superintendent where notice is being given to the District or the City Manager where notice is being given to the City. All notices shall be deemed received upon actual receipt or three (3) business days after deposit in the United States mail, whichever date is earlier.

Section 10. General Provisions.

10.1 Supervision of Programs. The City agrees that City Use of District Facilities shall be properly supervised by qualified personnel. The District agrees that District Use of City Facilities shall be properly supervised by qualified personnel. All personnel shall adhere to the applicable rules and regulations of each respective party.

10.2 Facility Access. Access will be provided for program events and activities approved under this Agreement.

10.3 Access to Storage. Wherever reasonably possible, a facility owner will make available storage space on site for joint use program equipment and supplies.

10.4 Facility Maintenance Responsibilities. With each occupancy, the facility user will be responsible for the pre and post occupancy preparations which may include opening and closing movable walls unless other conditions are established between the facility owner and user. All joint use spaces will be returned to the condition which preceded use. Where possible and necessary, access to cleaning supplies will be provided by the facility owner agency. Whenever possible, the facility user should check with the facility custodian to establish agreement upon the pre and post use conditions.

Section 11. Miscellaneous Provisions.

11.1 Entire Agreement, Amendments. This Agreement represents the entire Agreement of

the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by both parties. This agreement supersedes all prior negotiations, understandings, and agreements between the parties concerning the subject matter of this agreement.

11.2 Governing Law, Forum. It is mutually understood and agreed that this Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof will be instituted only the courts of the State of Arizona.

11.3 Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this agreement.

11.4 Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

11.5 A.R.S. §38-511. Under Section 38-511, Arizona Revised Statutes, as amended, City or District may cancel any contract to which they are a party within three (3) years after execution of such contract and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the party so canceling is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

11.6 Nondiscrimination. City and District agree to take all actions necessary to ensure that everyone is treated fairly, courteously, and without bias so as to preserve human dignity and to respect cultural diversity. City and District agree to comply with all applicable provisions of federal, state, and local laws related to nondiscrimination and equal employment opportunity.

11.7 Approval by Parties. Before this Agreement shall become effective and binding upon the parties, the appropriate governing authorities of each party must approve it. In the event that such appropriate authority fails or refuses to approve this Agreement, it shall be null and void with no effect whatsoever.

11.8 Non-appropriation. Each party acknowledges that the other party is a government entity, and the Agreement validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of each party's respective obligations under this Agreement, then this Agreement shall automatically expire without penalty to either party after written notice to of the unavailability and non-appropriation of public funds. It is expressly agreed that neither party shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure.

11.9 E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the parties warrant their compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned

warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the other party's random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

11.11 Surviving Provisions. The obligations under Section 8 (Indemnification) shall survive expiration or other termination of this Agreement.

11.12 Construction. Except as otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against with party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF SURPRISE

DYSART UNIFIED SCHOOL
DISTRICT NO. 89

By: _____
Sharon M. Wolcott, Mayor

By: _____
Dr. Gail Pletnick, Superintendent

ATTESTED:

Sherry Aguilar, City Clerk

ATTORNEY CERTIFICATION

The undersigned certify that they have reviewed the foregoing Agreement and that said Agreement is in proper form and is within the powers and authority granted to the public body represented by the respective attorneys.

Jennifer N. MacLennan
Attorney for Dysart Unified School
District No. 89

Robert Wingo
Attorney for City of Surprise